

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Roger L. Couch, Circuit Court Judge

RECEIVED
JAN 25 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOHN ANTHONY SINGLETON,

APPELLANT

APPELLATE CASE NO 2017-001447

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in not directing a verdict on the charge of second-degree criminal sexual conduct with a minor because the complainant unequivocally testified about her age when the alleged abuse occurred and her age did not fit within the statute's requirements?

STATEMENT OF THE CASE

In June 2017, a Charleston County grand jury indicted appellant for second-degree criminal sexual conduct with a minor, lewd act upon a child, and third-degree criminal sexual conduct with a minor. R. 597 – 602. On June 19, 2017, appellant was tried before the Honorable Roger Couch and a jury. R. 1. Shannon Elliott and Debbie Herring-Lash represented the State. R. 1. Megan Ehrlich and Taylor Seman represented appellant. R. 1. The jury convicted appellant. R. 578, ll. 7 – 20. Judge Couch sentenced appellant to concurrent terms of twelve years' imprisonment. R. 594, l. 23 – 595, l. 7. This appeal follows.

ARGUMENT

The trial judge erred in not directing a verdict on the charge of second-degree criminal sexual conduct with a minor because the complainant unequivocally testified about her age when the alleged abuse occurred and her age did not fit within the statute's requirements.

The indictment for second-degree criminal sexual conduct ("CSC") contained the following specific factual allegation: "did commit, or assaulted with the intent to commit, a sexual battery upon a minor, [complainant] . . . who was fourteen years of age or less but who was at least eleven years of age; to wit: cunnilingus." R. 598. Appellant was complainant's mother's boyfriend and lived with the family. R. 83, ll. 11 – 14.

Complainant gave specific testimony regarding this allegation. On the night the assault occurred, six people were in the small house. R. 121, l. 8 – 122, l. 9. At approximately 9:00 PM, appellant brought complainant into the kitchen. R. 121, l. 8 – 123, l. 4. Complainant had been on the porch talking to her aunt and cousin. R. 90, ll. 3 – 12. Appellant came home from work and asked complainant to come inside. R. 90, ll. 3 – 12.

With her aunt and cousin awake on the porch and three other people inside the house, appellant asked complainant to pull down her pants in the kitchen. R. 90, l. 16 – 91, l. 12. Complainant refused and appellant threatened to tell her mother about her boyfriend. R. 90, l. 16 – 91, l. 12. Complainant became afraid and pulled down her pants. R. 90, l. 16 – 91, l. 12. Appellant then performed oral sex on complainant in the kitchen. R. 90, l. 16 – 91, l. 12.

Complainant's cousin entered the kitchen and testified she witnessed the assault. R. 90, l. 16 – 91, l. 12. R. 199, l. 21 – 201, l. 19. The cousin "did a double take." R. 199, l. 21 – 201, l. 19. Appellant was on his knees and said he was "picking something up." R. 199, l. 21 – 201, l. 19. Appellant and her aunt and cousin discussed the matter and appellant made them promise

not to tell anyone. R. 199, l. 21 – 201, l. 19. The aunt said she did not report the abuse because the same thing happened to her and she felt like her niece needed someone she could trust. R. 226, ll. 1 – 6.

As the solicitor began to ask specific questions regarding the assault, complainant contradicted her own testimony. R. 95, ll. 20 – 24. She changed her previous testimony that she pulled down her own pants and said that appellant pulled them down. R. 95, ll. 20 – 24.

The solicitor then asked complainant her age when the assault happened. R. 96, l. 25 – 97, l. 1. Complainant replied, “Ten.” R. 97, l. 2. Trying to correct complainant, the solicitor then asked her whether she was in elementary or middle school, but complainant replied, “Elementary.” R. 97, ll. 3 – 4. The solicitor then asked for a break. R. 97, ll. 7 – 10.

After returning from her break, the solicitor asked complainant two more questions about middle school, but she replied unequivocally that she had not begun middle school when the assault happened. R. 97, ll. 12 – 22. The solicitor then moved on to another subject. R. 97, ll. 23 – 25.

Appellant moved for a directed verdict on the second-degree CSC charge after the State rested. R. 420, l. 15 – 424, l. 12. Appellant argued that complainant unequivocally testified that she was ten years old when the alleged cunnilingus occurred. R. 420, l. 15 – 424, l. 12. Second-degree CSC requires the victim to be between the ages of 11 and 14. R. 420, l. 15 – 424, l. 12. See S.C. Code Ann. § 16-3-655(B). Appellant argued that no evidence existed about complainant’s age at any particular grade level. R. 420, l. 15 – 424, l. 12.

The State responded that the aunt testified that the assault occurred within a year of the report to the police, which would have made complainant eleven years old. R. 420, l. 15 – 424, l. 12. However, the aunt was equivocal about this time frame. R. 226, l. 23 – 227, l. 7. The aunt


said less than a year passed between the assault and the report to the police, but also agreed it had “been some time.” R. 226, l. 23 – 227, l. 7. The trial judge denied the directed verdict motion solely on the basis of the aunt’s equivocal testimony. R. 424, ll. 7 – 12.

The court erred in not directing a verdict on this charge because complainant’s testimony about her age was unequivocal. R. 97, ll. 2 – 22. Because the State failed to meet the age element, no evidence exists from which a reasonable juror could infer guilt. State v. Bennett, 415 S.C. 232, 235-37, 781 S.E.2d 352, 353-54 (2016) (discussing directed verdict standard of review on appeal). Complainant’s confident testimony that she was ten years old when the assault occurred is direct evidence that appellant was not guilty of second-degree CSC. See State v. Rogers, 405 S.C. 554, 563, 748 S.E.2d 265, 270 (Ct. App. 2013) (discussing the difference between direct and circumstantial evidence).

Against this direct evidence disproving the charge, the State offered only the circumstantial, wavering testimony of the aunt that the assault occurred within a year of the police report. This evidence was insubstantial and the trial court erred in relying upon it to deny the directed verdict motion. See State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) (holding the State must produce substantial circumstantial evidence to survive directed verdict). Appellant was ten years old and did not fit within the crime charged. This Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's second-degree CSC conviction.


David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of January, 2018.

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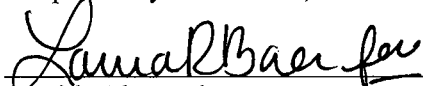
PETITION TO BE RELIEVED AS COUNSEL

Counsel for John Anthony Singleton states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Roger L. Couch, which was held on June 19 - 21, 2017, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for John Anthony Singleton.

Respectfully Submitted,



David Alexander

Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of January, 2018.

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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments;
- (2) Trial transcript.

I certify that this designation contains no matter which is irrelevant to this appeal.

January 25, 2018



David Alexander
Appellate Defender

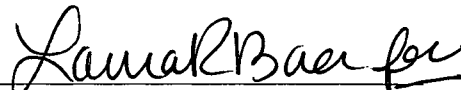
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ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 25, 2018.



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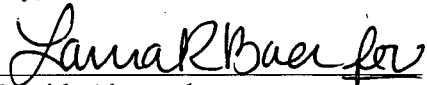
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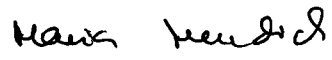
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on John Anthony Singleton, # 258481, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 25th day of January, 2018.



David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 25th day of January, 2018.



(L.S)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.